

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1347 of 1997

in

CIVIL APPLICATION No 404 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PRABODHCHANDRA V. SHAH SINCE DECEASED THROUGH HER HEIRS

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL for Appellants
MR. ST MEHTA, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 05/02/98

ORAL JUDGEMENT

1. Admitted. Mr. S.T. Mehta, A.G.P. waives

service of notice of admission. In the facts and circumstances of the case, matter is taken up today for final hearing.

2. This appeal is filed against an order passed by the learned learned single Judge in Civil Application No.404 of 1996 and consequential order in Special Civil Application No.389 of 1990.

3. It appears that in 1990, a petition was filed by one Prabodhchandra Vadilal Shah. It was admitted. Rule was issued, interim relief was also granted and the petition was pending for final hearing. During the pendency of the petition, the original petitioner Prabodhchandra Vadilal Shah - died in 1993. Civil Application No. 404 of 1996 was filed by Madhuriben P. Shah and Others to bring heirs and legal representatives of deceased Prabodhchandra Shah on record. That application was pending. During the pendency of that application, even Madhuriben (widow) died. Hence, another Civil Application 3813 of 1997 came to be made, wherein it was mentioned that some of the heirs had already made an application and those heirs may be described as heirs of deceased Prabodhchandra V. Shah-original petitioner and now, in view of death of widow, they may also be shown as heirs and legal representatives of the widow. The learned counsel for the appellant states that the said application was granted. But when the earlier application which was filed by Madhuriben, widow of Prabodhchandra V. Shah and others came up for hearing, the learned single Judge, by the impugned order dated July 2, 1997, rejected it, observing that the main matter was of 1990, and an application came to be filed only after five years and there were no reasons for such delay.

4. The learned counsel, in our opinion, is right in submitting that when the applicants came to know about the fact that a petition was pending, immediately, proceedings were taken by filing an application. Again, when the widow died, another application was made, which was granted. Hence, in the facts and circumstances, it cannot be said that there was negligence or inaction on the part of the applicants in approaching this Court by filing application for bringing heirs on record.

5. In any case, as on today, in view of the grant of subsequent application, even the estate of the deceased was represented. The earlier application, therefore, ought not to have been rejected.

6. Hence, this Letters Patent Appeal is allowed and the order passed by the learned Single Judge rejecting Civil Application No.404 of 1996 and the consequential order dismissing Special Civil Application No.389 of 1990 are hereby set aside. The petition is now restored to file and to be treated as pending. Letters Patent Appeal is allowed to the above extent. No order as to costs.

7. The office will now place the main matter, i.e. Special Civil Application No.389 of 1990 on board before an appropriate Court taking up such matters.

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